

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2008 180

ANKUR DEEP GILL
8908 Boulder Glenn Way
Sacramento, CA 95829

STATEMENT OF ISSUES

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about March 26, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Ankur Deep Gill (Respondent). On or about February 28, 2008, Ankur Deep Gill certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 31, 2008.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3732 of the Code states:

8 "(a) The board shall investigate an applicant for a license, before a license is
9 issued, in order to determine whether or not the applicant has the qualifications required
10 by this chapter.

11 "(b) The board may deny an application, or may order the issuance of a
12 license with terms and conditions, for any of the causes specified in this chapter for
13 suspension or revocation of a license, including, but not limited to, those causes
14 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

15 7. Section 492 of the Code states:

16 “Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol and drug
18 problem assessment program under Article 5 (commencing with section 23249.50) of
19 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established
20 under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any
21 initiative act referred to in that division, from taking disciplinary action against a licensee
22 or from denying a license for professional misconduct, notwithstanding that evidence of
23 that misconduct may be recorded in a record pertaining to an arrest.”

24 ““This section shall not be construed to apply to any drug diversion program
25 operated by any agency established under Division 2 (commencing with Section 500) of
26 this code, or any initiative act referred to in that division.”

27 ///

28 ///

1 8. Section 3750 of the Code states:

2 “The board may order the denial, suspension or revocation of, or the
3 imposition of probationary conditions upon, a license issued under this chapter, for
4 any of the following causes:

5 “(d) Conviction of a crime that substantially relates to the qualifications,
6 functions, or duties of a respiratory care practitioner. The record of conviction or a
7 certified copy thereof shall be conclusive evidence of the conviction.

8 “(g) Conviction of a violation of any of the provisions of this chapter or of
9 any provision of Division 2 (commencing with Section 500), or violating, or
10 attempting to violate, directly or indirectly, or assisting in or abetting the violation
11 of, or conspiring to violate any provision or term of this chapter or of any provision
12 of Division 2 (commencing with Section 500).

13 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
14 substantially related to the qualifications, functions, or duties of a respiratory care
15 practitioner.”

16 9. California Code of Regulations, title 16, section 1399.370, states:

17 “For the purposes of denial, suspension, or revocation of a license, a crime
18 or act shall be considered to be substantially related to the qualifications, functions
19 or duties of a respiratory care practitioner, if it evidences present or potential
20 unfitness of a licensee to perform the functions authorized by his or her license or
21 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
22 acts shall include but not be limited to those involving the following:

23 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
24 abetting the violation of or conspiring to violate any provision or term of the Act.

25 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

26 “(c) Conviction of a crime involving driving under the influence or reckless
27 driving while under the influence.”

28 ///

1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the
4 board, the board or the administrative law judge may direct any practitioner or applicant
5 found to have committed a violation or violations of law to pay to the board a sum not to
6 exceed the costs of the investigation and prosecution of the case."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution
9 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
10 other administrative, filing, and service fees."

11 12. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation
13 may include, among other things, a requirement that the licensee-probationer pay the
14 monetary costs associated with monitoring the probation. "

15 FIRST CAUSE FOR DENIAL

16 (Substantially related convictions)

17 13. Respondent's application is subject to denial under code sections
18 3750(d) and 3752 [substantially related conviction], 3750(g), 3750(j) [dishonest act] and
19 CCR 1399.370(a), (b) and (c) in that in he has four substantially-related convictions. The
20 circumstances are as follows:

21 2007 "Wet Reckless" conviction

22 14. On or about May 3, 2007, Respondent was convicted on his plea of
23 nolo contendere to a misdemeanor violation of Vehicle Code section 23103.5 [reckless
24 driving, alcohol related.]

25 15. On or about April 1, 2007, at approximately 1:19 a.m., Sacramento
26 Police Lieutenant Hendrickson observed a vehicle traveling 50 miles per hour in a 35 mile
27 per hour zone. Officer S. Curtis contacted the driver, who was identified as Respondent
28 by his California driver's license. Officer Curtis smelled alcohol on Respondent's breath,

1 and administered field sobriety tests. Based on Respondent's poor performance on the
2 field sobriety tests as well as his objective symptoms, Officer Curtis arrested Respondent
3 for violations of Vehicle Code section 23152(a) [driving under the influence of alcohol]
4 and section 23152(b) [driving with a blood alcohol level of .08% or more.]

5 16. On or about May 3, 2007, in *People of the State of California vs.*
6 *Ankur Deep Gill*, Superior Court, Sacramento County case no. 07T02158, the Court
7 acquitted Respondent as to the alleged violation of Vehicle Code section 23152(b)
8 [driving with a blood alcohol level of .08% or more.] The District Attorney reduced the
9 remaining charge, a violation of Vehicle Code section 23152(a) [driving under the
10 influence of alcohol], to a violation of Vehicle Code section 23103.5 [reckless driving,
11 alcohol-related.] On May 3, 2007, Respondent was convicted on his plea of nolo
12 contendere to Vehicle Code section 23103.5, and he was placed on informal probation for
13 three years, ordered to pay fines or serve eight days in county jail in lieu of fines. He was
14 ordered to attend an Alcohol or Drug Program. On July 9, 2007, he submitted proof of
15 successful completion of a program.

16 November 3, 2000 diversion

17 17. On or about September 28, 2000, the Sacramento County Sheriff's
18 Department issued a citation to Respondent for a violation of Penal Code section 488,
19 petty theft. On November 3, 2000, in case no. M12851, Respondent entered a plea of
20 guilty to the amended charge of Penal Code section 484(a), theft of property. He was
21 granted deferred entry of judgment (DEJ) until February 8, 2001 and was ordered to attend
22 a course of instruction administered by Western Corrections, Level 2, as a condition of the
23 plea for diversion. On February 8, 2001, Respondent completed DEJ, the plea was
24 withdrawn and the case dismissed pursuant to Penal Code section 1385.

25 February 9, 2001 Diversion

26 18. On or about December 4, 2000, the Sacramento County Sheriff's
27 Department issued a citation to Respondent for a violation of Penal Code section 415(a),
28 fighting in public. On February 9, 2001, in case no. M14919, Respondent entered a plea

1 of guilty to the amended charge, Penal Code section 415(1), fighting in public. He was
2 granted deferred entry of judgment (DEJ) until May 17, 2001. As a condition of DEJ, he
3 was ordered to attend a course of instruction administered by Western Corrections, Level
4 2, as a condition of the plea for diversion. On May 17, 2001, Respondent completed DEJ,
5 the plea was withdrawn and the case dismissed pursuant to Penal Code section 1385.

6 April 13, 2001 Citation

7 19. On or about March 17, 2001, Respondent was cited for a violation
8 of Business and Professions code section 25662(a), minor in possession of alcohol. On
9 April 13, 2001, in case no. 1M04342, Respondent entered a plea of guilty to the charge.
10 He was ordered to pay fines and his driver's license was suspended for one year.

11 20. Therefore, Respondent's application is subject to denial based on
12 his two diversion adjudications, citation and reckless driving conviction. The November
13 3, 2000 diversion for property theft is in violation of code section 3750(j) [dishonest act]
14 and CCR code section 1399.370(b) [conviction of a crime involving theft]. The two
15 diversions, citation and conviction are in violation of code sections 3750(d) and 3752
16 [conviction], 3750(g), and CCR section 1399.370(a) and (c) [conviction of a crime
17 involving reckless driving while under the influence.]

18 **SECOND CAUSE FOR DENIAL**

19 (Dishonesty)

20 21. Paragraphs 14 through 19 are incorporated herein.

21 22. Respondent's application is subject to denial under code section
22 3750(j){dishonest act] in that he failed to reveal the November 3, 2000 and February 9,
23 2001 diversion adjudications, as well as the April 13, 2001 citation for possession of
24 alcohol in his application for licensure.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Ankur Deep Gill for a Respiratory Care Practitioner License;
2. Directing Ankur Deep Gill to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: October 10, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SF2008200480
gill_a_soi.wpd